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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/520,627

06/30/2005

Ingo Kalliske

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22428 7590 05/28/2008  
FOLEY AND LARDNER LLP  
SUITE 500  
3000 K STREET NW  
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EXAMINER

TO, TOAN C

ART UNIT

PAPER NUMBER

3616

MAIL DATE

DELIVERY MODE

05/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/520,627	<b>Applicant(s)</b> KALLISKE ET AL.	
	<b>Examiner</b> Toan C. To	<b>Art Unit</b> 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 42-82 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 42-82 is/are pending in the application.
- 4a) Of the above claim(s) 47,48,54,55,57,60-62,67-72 and 74-76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-46,49-53,56,58,59,63-66 and 77-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/3/08; 1/10/05</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species II, figures 2A-2B and 3A-3B, claims 42-53, 56, 58-59, 63-66, 73 and 77-82 in the reply filed on March 12, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 54-55, 57, 60-62 and 67-72, and 74-76 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 12, 2008.
3. Claims 47-48 are withdrawn from further consideration by the examiner as being drawn to a non-elected species, in this case, the elected figures 2A-2B and 3A-3B do not show vent openings as recited in claims 47-48.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 42 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 42 recites the limitation "the first direction" in line 6. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 42-46, 49-53, 56, 58-59, 63-66, and 77-82, as best understood by the examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by Sasaki (U.S. 6,364,402)

With respect to claims 42-46, Sasaki discloses an automotive safety apparatus for protecting a person located outside an automobile from impact with an external part of the automobile comprising: a device (25) configured to deflect the part (21) of the automobile in a deflecting direction from a first position (closed position) to a second position (raise position), wherein after the device has deflected the part (21), the deflecting device (25) is configured to oppose and control movement of the part (21), and wherein the deflecting device (25) is configured to control movement of the part (21) based upon the time of the impact, the location of the impact or the direction of the impact; wherein the device (25) permits a movement of the part (21) counter to the deflecting direction only a predetermined time period after the deflection of the part (21); wherein the device is configured to use gas pressure to deflect the part; wherein the device is configured so that the pressure of the gas (a control section 39 controls the pressure of the gas) is controlled over time to decrease after deflection of the part;

wherein the device is configured so that the pressure of the fluid acting on the deflected part (21) is reduced by discharging some of the gas.

With respect to claims 49-50, Sasaki discloses an automotive safety apparatus, wherein the deflecting device (25) can be triggered pyrotechnically (inherently disclosed).

With respect to claims 51-53, and 73, Sasaki discloses an automotive safety apparatus wherein the deflecting device (25) comprises an element which can be filled with fluid so that when the element (26) is filled the element applies a force to the part, wherein the deflecting device comprises a piston (28) which can apply a force on the part (21), wherein the piston (28) is configured to receive a fluid for extending the piston (28), wherein a movement of the piston counter to the deflecting direction can be triggered only upon an impact against the part within a specified directional region.

With respect to claims 58-59, Sasaki discloses an automotive safety apparatus, wherein the deflecting device includes an elastically or plastically deformable element (21a), wherein the device (25) is configured so that when a person impacts against the part the elastically or plastically deformable element deforms to permit the part to move counter to the deflecting direction.

With respect to claims 63-65, Sasaki discloses an automotive safety apparatus, wherein the deflecting device (25) is reversible, so that a movement of the part (21) counter to the deflecting direction is made possible by a movement of elements of the deflecting device in a direction counter to the deflecting direction, wherein the deflecting

device (25) can be moved counter to the deflecting direction only upon the impact of a body part of a person against a predetermined region of the part, wherein the deformable element (21a) can be deformed only after an impact force is applied from a predetermined direction within a predetermined region of the part.

With respect to claim 66, Sasaki discloses an automotive safety apparatus, wherein device includes at least one element (28) configured so that the deflecting device permits a movement of the part (21) counter to the deflecting direction only upon an impact within a specified directional region of the part.

With respect to claims 77, Sasaki discloses an automotive safety apparatus, wherein the deflecting device (25) is configured to be activated by a first impact of the person against the vehicle, so that the part (21) of the external paneling is deflected, wherein the device is configured to be activated when the force produced during the impact acts on the deflecting device, wherein the deflecting device (25) is configured to be activated based on a signal of a sensor (38a-38c) coupled to the deflecting device (25); wherein the flap is an engine hood, wherein the application point of the deflecting device (25) is provided in the region of the end of the flap (21) which faces the passenger compartment.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan C. To whose telephone number is (571) 272-6677. The examiner can normally be reached on Mon-Fri (8:00-5:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Toan C To/  
Primary Examiner, Art Unit 3616  
May 25, 2008